

EXHIBIT 26

From: [Christopher Greene](#)
To: ["James Kolenich"](#)
Cc: [Roberta Kaplan](#); [Gabrielle Tenzer](#); [Karen Dunn](#); [Philip Bowman](#); [Levine, Alan](#); ["Mills, David"](#)
Subject: RE: Kessler device imaging
Date: Thursday, July 19, 2018 5:02:40 PM
Attachments: [Search Terms for Kessler Devices.docx](#)

Jim,

Without waiver of our right to have Defendants abide by the terms of the proposed imaging stipulation circulated to Defendants on June 13 (including to bear the cost of preserving and producing information responsive to Plaintiffs' discovery requests), attached are search terms Plaintiffs request that you run on the data collected from Mr. Kessler's cell phone. The attached redline slightly modifies and supplements the terms provided by the City of Charlottesville.

Finally, we note that any instructions to delete the data collected from Mr. Kessler, if that data is not otherwise preserved, would be a violation of Mr. Kessler's obligation to preserve information relevant to this litigation.

Regards,

Christopher B. Greene
Kaplan Hecker & Fink LLP
(929) 294-2528

From: James Kolenich [mailto:jek318@gmail.com]
Sent: Monday, July 16, 2018 11:17 PM
To: Christopher Greene <cgreene@kaplanhecker.com>
Subject: Re: Kessler device imaging

Chris,

I'm out of the office the next three days. I didn't pull the proposed agreement but the imaging is comprehensive through a vendor selected by the City of Charlottesville. I believe they are using cellubrite and then relativity for doc review. Kessler is unable to further participate in paying for e-discovery. Literally, it would be cheaper to just buy my own cellubrite equipment than pay them for 1 TB plus. It's possible we are looking at more than 1 TB of info though it's largely redundant. Nevertheless, I have the imaging of his phone (unredacted) now. Redaction is in process. Attached is a copy of the search terms proposed by the City. I included "Enoch" because they listed "Peinovich" which yielded 1 result but failed to include "Enoch" which yielded 75 results.

If you want to add to that list I will submit any reasonable terms suggested by you as my own which should not cause any increase in Kessler's current bill. Anytime in the next day or two should be good. I will provide you with results of his phone imaging when redaction is complete.

Beyond that, if we (or the City) can't come to a financial agreement, I will instruct the company to delete the data. We are not paying to store it while lawyers haggle and I am not turning over un -vetted data, just as you would not.

I'm sure they would send me unsearched data but at those amounts my tiny legal group could probably finish vetting it around 2020 or so. In the alternative we could both try to ride the City's coattails. Kessler is actually protected by the Civil Rules from having to pay for this (unreasonable burden), contrary to your legal assertion.

Best,

Jim

On Mon, Jul 16, 2018 at 7:40 PM, Christopher Greene <cgreene@kaplanhecker.com> wrote:

Jim,

Would you be able to provide more information concerning the imaging that Mr. Kessler's devices are undergoing and whether it comports with the imaging stipulation we circulated among the parties on June 13?

As for the expenses associated with producing responsive documents, until the Court orders otherwise, the "presumption is that the producing party should bear the cost of responding to properly initiated discovery requests," *Adkins v. EQT Production Co.*, No. 1:10CV00041, 2012 WL 5465491, at *4 (W.D. Va. May 31, 2012), *objections overruled sub nom. Adair v. EQT Prod. Co.*, No. 1:10CV00037, 2012 WL 2526982 (W.D. Va. June 29, 2012). Indeed, as you know, Plaintiffs are bearing their own costs of responding to discovery in this case. Plaintiffs will, however, propose a set of search terms with the understanding that the costs of any production from Mr. Kessler based on those terms would be borne by Mr. Kessler.

Regards,

Christopher B. Greene
Kaplan Hecker & Fink LLP
(929) 294-2528

From: James Kolenich [mailto:jek318@gmail.com]
Sent: Tuesday, July 10, 2018 1:29 PM
To: Christopher Greene <cgreene@kaplanhecker.com>
Subject: Kessler device imaging

Chris:

It looks like Kessler will be having his devices imaged tomorrow. Want to submit some

search terms? Also, there is a holdup regarding who pays for producing responsive docs after the keyword search. Is there any willingness on your end to participate in that cost?

Jim

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